IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 723 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SALIMKHAN ALIAS SALIM CHOR TAHIRKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR KG SHETH,Learned APP for Respondent No. 1,2 and3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 25/09/2000

C.A.V.JUDGEMENT

1. The petitioner has preferred this petition under Articles 21, 226 and 227 of the Constitution of India challenging the order of externment passed by the Deputy

Commissioner of Police, Ahmedabad City on 29.1.2000 in Externment Case No. 12 of 2000 and confirmed in Appeal before the third respondent on 24.7.2000 under Section 60 of the Bombay Police Act (for short "the said Act). The petitioner was served with show cause notice issued by the Assistant Commissioner of Police on 4.9.1999 to show cause as to why he should not be externed out of the limits indicated in the said notice for a period of 2 years. The proceedings were undertaken and thereafter, the Deputy Commissioner of Police passed order on 29.1.2000 externing the petitioner out of the limits of the area indicated in the order for a period of 2 years from the date of the order.

2. The petitioner had preferred appeal under Section 60 of the said Act and there also, the aforesaid order was confirmed and the appeal was dismissed on 24.7.2000. Feeling aggrieved by the said judgments and orders of the said two Authorities, the petitioner has preferred this petition before this Court on several grounds. One of the ground is that the notice was issued by the Assistant Commissioner of Police and the final order has been passed by the Deputy Commissioner of Police though, it is not in accordance with law and, therefore, the externment order suffers from the aforesaid illegality and hence, it may be quashed.

3. On receiving the petition, rule was issued and Mr. K.G.Sheth, learned APP appeared for the respondents. I have heard learned advocates for the parties and have perused the papers.

4. Though many contentions have been raised, the arguments was restricted to the point that the notice was issued by the Assistant Commissioner of Police under Section 59 of the said Act and order has been passed by the Deputy Commissioner of Police and that there was no reason for transfer of matter from one office to another. That therefore the order in question is not legal and valid.

5. On this aspect of the case, the learned advocate for the petitioner has relied upon a decision of this court (Coram : D.C.Srivastava,J.) in the case of Hussainmiya @ Jago Razakmiya Qadri Vs. State of Gujarat & Ors. reported in 1999 (2) GLH 786. The said observation and finding of decision in para.6 of the judgment may be reproduced for ready reference as follows :

Para.6.

"Coming to the first stage, if the show cause notice is examined and the externment order is perused, it prima facie appears that the show cause notice was issued by the Assistant Commissioner of Police (Easter Division) Rajkot City: whereas the impugned order was passed by the Deputy Commissioner of Police, Rajkot city, Rajkot. It thus appears from the record that the impugned order was not passed by the authority who issued the show cause notice after entertaining subjective satisfaction that it was necessary to extern the petitioner from the three districts. No affidavits has been filed explaining that the externing authority was actually the successor of the authority who issued the show cause notice. There is no material on record to infer that the authority who is issued the show cause notice was transferred and thereafter no other officer was posted to succeed him and his business was allocated to the externing authority in addition to his work. Thus from the material on record as it exists today, it can be said that the subjective satisfaction before issuing the show cause notice was entertained by one authority; whereas the externment order was passed by another authority."

6. In the case before me also, the notice was issued by the Assistant Commissioner of Police and final order has been passed by the Deputy Commissioner of Police. It is not explained as to why the matter was transferred from Assistant Commissioner of Police to Deputy Commissioner of Police. Mr. K.G.Sheth, learned APP has argued that the Assistant Commissioner of Police is subordinate to the Deputy Commissioner of Police, but that would not solve the problem. The question is that as to why the matter was heard by the Deputy Commissioner of Police though it was initiated by the Assistant Commissioner of Police. It is also not explained as to why the matter was transferred from the Assistant Commissioner of Police to Deputy Commissioner of Police and as to who transferred the same. These things are not on record. No affidavit has been filed with respect thereto.

7. In that view of the matter, there is no reason to differ from the decision recorded by this Court also in the above referred case. On following the said decision, I am of the view that this would be a ground for quashing

the order of the externment of the petitioner in the light of the decision of this Court referred to hereinabove.

8. In the aforesaid view of the matter, this petition is allowed. The order of externment dated 29.1.2000 passed by the Deputy Commissioner of Police in Externment Case no. 12 of 2000 and confirmed in Appeal by the third respondent on 24.7.200 are hereby quashed and set aside. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(D.P.Buch,J)

(vipul)